

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.Rev.Pet.No. 3699 of 2007()

CRA.110/2006 of SESSIONS COURT, KOLLAM
CC.1234/2002 of JUDL.MAGISTRATE OF FIRST CLASS-III, PUNALUR
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REVN. PETITIONER: APPELLANT/ACCUSED:

PRESENAN, S/O. K.K. BHANU,
PUSHPAMANGALAM, KALAYANADU, PLACHERRY,
PUNALUR, VALACODU VILLAGE.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY

RESPONDENTS: RESPONDENT & COMPLAINANT:

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1. VIJAYARAJAN, S/O. PADMANABHAN,
KURUP FAIR TIGHT, T.C.NO.13/456,
NIRANDA JUNCTION, KUNNUKUZHY, THIRUVANANTHAPURAM.
 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V.RAMKUMAR, J.
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Crl.R.P. No. 3699 of 2007
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Dated this the 19th day of October, 2007

ORDER

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.1234 of 2002 on the file of the J.F.C.M-III, Punalur challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. Learned counsel for the revision petitioner made the following further submissions before me:-

The accused was the contractor of Punalur Municipality where the complainant was an employee. The cheque in question was a signed blank cheque managed to be obtained by the complainant from the accused for sanctioning the bill in favour of the accused and the complainant was misusing the said cheque. The complainant

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Vijayarajan died pending the proceedings before the trial court and his wife Ushakumari was permitted to continue the proceedings and it was she who was examined as PW1. Since PW1 did not know anything about the transaction set up by the defence, the accused did not adduce any evidence to substantiate his defence.

5. Both the courts below did not accept the above contentions. The fact that PW1 was not able to confirm or deny the suggestion put to her with regard to the defence version, will not amount to proof of the defence story. The accused did not mount the witness box nor did he examine any witness in support of the above version.

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. The sentence imposed on the revision petitioner is set aside and instead he is sentenced to pay fine of Rs.30,000/-(Rupees thirty thousand only)(giving credit to the sum of Rs.20,000/- deposited before the trial court pursuant to the orders passed by the lower appellate court and which amount shall be allowed to be withdrawn by PW1 wife of the complainant) which shall be deposited within **five**

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months from today and on default to make the payment, he shall suffer simple imprisonment for three months. The fine amount shall be paid as compensation under Section 357(1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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